

From: Class Counsel
Sent: Tuesday, August 18, 2015
To: 'AllBP'
Subject: BP Oil - Settlement Program Update

Dear Friends,

We understand that many of your clients have questions regarding the status of claims, and particularly Business Economic Loss (BEL) Claims, within the Court-Supervised Settlement Program, which independently administers the Economic & Property Damages Settlement with BP, subject to the supervision and direction of the Court.

As most classmembers are probably aware, BP, beginning in January of 2013, launched a series of advertisements, attacks, motions, appeals, internal program appeals, threats, suits, audits, injunctions, stays, calls for investigation, calls for removal, petitions for review from the supreme court, with respect to the Claims Administrator, the Program Vendors, and the Settlement itself, which had the somewhat predictable and BP-desired effect of forcing the Claims Administrator and Program Vendors to work under a lot of distractions and uncertainties, diverting their attentions from the processing of claims, bogging down the administrative systems and processes – and, in the case of BEL Claims, effectively shutting down the Program for over a year and forcing them to re-write all of the logic and methods for BEL Claim review, both changing the substantive calculations under the U.S. Fifth Circuit’s October 2013 “BEL” Decision and what is known as “Policy 495”, while also requiring generally the submission of additional documents and/or information.

In addition, because of some unfortunate and extremely isolated events, a Special Master was appointed to review the Program, and, in response to BP’s (largely unfounded and exaggerated) complaints about allegedly “fraudulent” and/or “fictitious” claims, introduced a number of anti-fraud prevention measures which have had the further effect of requiring additional documents and/or information, and generally slowing down the processing of claims.

Class Counsel have appealed Policy 495 to the United States Fifth Circuit Court of Appeals, and continue to press for changes in the Settlement Program.

Some people have suggested that the Program Accountants and/or other Program Vendors might have some type of overall desire or plan to delay and/or deny BEL

and/or other Claims. With the number of different vendors and staff working on Settlement Program Claims, such individuals almost certainly possess a number of different individual motivations, incentives, mindsets, fears, dispositions and concerns. But, from what we have seen, Class Counsel do *not* believe that there is an overall agenda to delay or deny Claims. While it's impossible to speak to the actions or intent of an individual front-line (and perhaps only temporary) Program Accountant, we meet with the Claims Administrator and his Staff at least once a month, (as well as *via* e-mail communication fairly constantly), and we believe that they are firmly committed to getting Claims processed fairly and efficiently.

The delays that your clients may be experiencing are likely due to a combination of one or more of the following factors:

- As many as approximately 80,000 BEL Claims are still pending;
- Tens of thousands of other types of Claims;
- Effectively, no matter how long ago a BEL Claim was originally filed, they had to start over from scratch with the easier Annual Variable Margin (AVM) BEL Claims last Fall;
- They did not start over with the more complex Construction Claims until earlier in 2015, and are just now starting to start over with the Agricultural, Education, and more complex Professional Services Claims;
- The general complexity of the Frameworks, and both the complexity and inconsistency in the individual books and recordkeeping of the various companies;
- While Class Counsel have never been told this explicitly, we believe that the Program generally tries to dispose of the easier claims first, (which makes sense);
- Class Counsel also get the impression that the Program likely tries to focus on Zone A and B Claims before moving to Zone C and D, (which, if true, would also make sense);
- There have been unexpected delays in converting over to the new IT system; (which they are working on);
- There has been a lot of turnover in Program Accountants; (which they are working on);
- The anti-“fraud” measures imposed by the Special Master;
- The number of Settlement Program Appeals taken by BP not only delays the payment of the specific Claim in question, but also has a systemic slow-down effect, as the Program Accountants or others familiar with the Claim

in question need to stop what they are doing in order to do Summaries of Review, respond to inquiries from the Panelists, and re-process Claims that are remanded back by the Panelists, as well as other added administrative issues or concerns;

- The recent U.S. Fifth Circuit Court of Appeals ruling allowing the appeal of Individual Claims to the Fifth Circuit has created systemic slow-down effects by forcing the Program to become an effective “clerk of court” in docketing Claims; creating an air of uncertainty regarding interpretive policies; and may result in substantial stoppages / re-evaluations / re-programming / do-overs / start-overs / re-processing and even potential “claw-back” of Claims in the event that the Fifth Circuit reverses on material interpretive issues – whether in BP’s or in the Claimants’ favor;
- BP’s filings, ads, attacks, appeals, threats, etc., have likely had the effect of causing the Program Accountants and other Vendors to really dot the Is and cross the Ts, because they don’t want to be accused, attacked, audited, criticized, reversed, potentially fired or even sued, for allegedly approving or paying an allegedly “fraudulent” or “fictitious” or “excessive” or “improper” claim.

On the other hand, and at the same time:

- Over \$6 billion in determinations, and counting;
- Over \$5.2 billion in payments, and counting; (we see fairly regular requests by the Program’s CFO for additional funds to replenish the General Claims Account); (and we also see Program Appeal Decisions coming out daily) (and rulings on Requests for Discretionary Review regularly);
- The Class stands to receive hundreds of millions that are still being held in the Seafood Fund; \$82 million in Transocean Insurance Proceeds Funds; and an allocation of up to potentially \$1.2 Billion from proposed settlements with Halliburton and Transocean;
- While frustrating and often time-consuming – (and in some cases extremely burdensome or even impossible to respond to, which procedures Class Counsel are in the process of challenging) – the fact that Program Accountants have looked into issues by requesting additional documents and/or information on the front end generally seems to help Claimants defending against BP Settlement Program Appeals on the back end;
- How many of the still-pending Economic Claims which stand to receive potential payments from the Settlement Program had actually received final offers or final payments from the GCCF? Or had even filed a claim with the

GCCF, filed a Short-Form Joinder, or filed an actual lawsuit, prior to the promulgation of the Settlement and its terms in April of 2012?

- What time, money and effort would those businesses and individuals have to expend in a formal adversarial discovery process? And what risks and/or uncertainties would they face in terms of attempting to establish causation and *quantum* at the Rule 12 stage, on Summary Judgment, and/or at Trial before different judges and juries in the Federal Courts from Texas to Florida?
- The considerable volume of Claims (which, of course, slows things down collectively) is presumably at least partially a function of how good the Settlement is; and
- The reason why BP probably sacrificed so much time, effort, money, and loss of credibility in its ongoing attempts to attack, appeal, audit, investigate, threaten, delay, withdraw from, de-fund and/or stay the Program, the Claims Administrator, the Program Vendors, and the Settlement itself, is presumably at least partially a function of how good the Settlement is.

Class Counsel know it's still frustrating for the individual Claimants and their attorneys and/or CPAs who are waiting, and responding – and waiting some more, and responding again, and waiting.... (And, believe us, it is frustrating for Class Counsel, both generally and with respect to our own individual clients' Claims.) But the people who are ultimately responsible for this Settlement Program have – despite being unfairly attacked and criticized by BP for almost two solid years in a very public and inappropriate way – accomplished a remarkably impressive, and likely unprecedented, level of success in the trial, settlement, and other resolution of common issues and literally hundreds of thousands of State, Local, Federal, private business and other claims in this MDL, within just five years, and are continuing to work hard and at a very high level to do the very best that they can.

As to the specific status of Claims, Class Counsel understand that all of our clients are constantly pressing for some type of time-table or projection on when a final determination or payment might be made, but we generally don't want people at the Program to stop whatever they are doing in order to check on, and then report back on, the precise status of a Claim, with some type of estimate that is almost sure to be wrong. (Would also note that we never intended “transparency” to refer to status or timing on a particular claim; what we meant was transparency into the frameworks and methodologies by which Claims would be calculated, on the front end, and then transparency on the back end into exactly how the Claim had been

evaluated, determined, or denied.) There are lots of claims. And there are lots of steps in the process. It's going to take a long time. We know that it's frustrating, but the last thing that we want to do is make the process potentially even less efficient. Think we just all likely just need to be patient.

Nevertheless, and in any event, we understand the frustration. Please continue to bring substantive issues, questions and/or concerns to Class Counsel, and feel free to e-mail and/or call if you want to discuss further.

Thanks again for your patience, and best wishes,

- Class Counsel